

REMARKS

In accordance with the forgoing, claims 1, 14, 17, 30, 34, 50, 59 and 61 have been amended, and claims 2-4, 18-20, 35, 36, 56 and 57 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 1, 5-10, 13, 14, 16, 17, 21 – 26, 29 – 30, 32, 34, 38 – 43, 46, 49, 50, 52 – 55 and 59 – 63 are pending and under consideration.

I. Double Patenting

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-57 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-58 of copending Application No. 10/727,008. Since the rejection is provisional, Applicants will address the provisional rejection once claims have been allowed.

II. Rejections Under 35 USC § 112

Claims 1-10, 13, 14, 16-26, 29, 30, 32, 34-43, 46, 49, 50, 52-57, and 59-63 stand rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the application regards as the invention.

The claims have been amended to remove the direct recitation of the physiologic parameters being ONE of pressure, heart rate variability and activity level. While applicants feel that the feature of using a weighted sum, where the weighting variables differ depending upon whether the parameter is pressure, heart rate variability or activity level is clearly described in the specification (see paragraphs [0070] and [0071] for example) and set forth in the claims, the claims have been amended to remove direct reference to the feature merely for the sake of moving the application toward allowance. Accordingly, withdrawal of the rejection is respectfully requested.

III. Rejections Under 35 USC § 102

Claims 1-10, 13-14, 16-26, 29-30, 32, 34-43, 46, 49, 50, 52-57 and 59-63 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hautala, et al., U.S. Patent Publication No. 2001/0027266 ("Hautala").

As described at paragraphs [0075] to [0078], in reference to FIGS. 8 and 7A-7C for example, the inventors have determined that in instances where measured physiologic parameter either declines slowly (beginning at approximately 40 days prior to admission in FIG. 7B when the parameter is heart rate variability, and approximately 70 days prior to admission in FIG. 7C when the parameter is activity level), or increases slowly (beginning at approximately 25 days prior to admission in FIG. 7A when the parameter is pressure), such changes can be identified by accumulating differences between measured parameters and the baseline measurement during times when there is no crossing of the baseline trend by the short term trend.

Therefore, independent claims 1, 17, 34 and 50 of the present application set forth accumulating, in response to determining no intersecting of the baseline trend by the short term trend, the determined differences between the baseline trend and the generated measured physiologic parameters, and detecting one of slowly declining changes and slowly increasing changes in the generated measured physiologic parameters in response to the accumulated determined differences.

Independent claims 14 and 30 of the present application set forth setting the adaptive baseline trend equal to the previous adaptive baseline trend increased by a predetermined updrift in response to the current adaptive baseline trend being less than the current short term trend, the downdrift and the updrift having respective first values in response to a decline in the measured physiologic parameters being associated with decomposition, and respective second values different from the first values in response to an increase in the measured physiologic parameters being associated with decomposition.

Hautala teaches calculating a heart rate variation, defined as temporal variations in heart beats around the expected moment when the heart should beat, using either a standard deviation or a distribution function. Hautala does not teach accumulating, in response to determining no intersecting of the baseline trend by the short term trend, the determined differences between the baseline trend and the generated measured physiologic parameters, and detecting one of slowly declining changes and slowly increasing changes in the generated measured physiologic parameters in response to the accumulated determined differences, as set forth in independent claims 1, 17, 34 and 50 of the present application.

Nor does Hautala teach setting the adaptive baseline trend equal to the previous adaptive baseline trend increased by a predetermined updrift in response to the current adaptive baseline trend being less than the current short term trend, the downdrift and the updrift having respective first values in response to a decline in the measured physiologic parameters being associated with decomposition, and respective second values different from the first values in response to an increase in the measured physiologic parameters being associated with decomposition, as set forth in independent claims 14 and 30 of the present application.

Claims 5-10, 13, 16, 21 – 26, 29, 32, 38 – 43, 46, 49, 52 – 55 and 59 – 63 depend directly or indirectly from independent claims 1, 17, 34 and 50 discussed above, and are submitted as being patentable for the reasons that independent claims 1, 17, 34 and 50 are believed to be patentable, as well as for the reason that these claims further distinguish over the referenced prior art documents. Therefore, for at least the reasons set forth above, claims 1, 5-10, 13, 14, 16, 17, 21 – 26, 29 – 30, 32, 34, 38 – 43, 46, 49, 50, 52 – 55 and 59 – 63 are patentably distinguishable from Hautala. Accordingly, withdrawal of the rejection is respectfully requested.

IV. Conclusion

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

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Date

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